

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENISE GAIL KIMBALL,

Defendant.

No. CR03-1025

REPORT AND RECOMMENDATION

This matter comes before the court pursuant to the government's December 22, 2003, motion for a finding that the defendant is incompetent to stand trial, for the defendant to be ordered into the custody of the Attorney General for hospitalization at an appropriate treatment facility for such reasonable time as is necessary to determine whether there is a substantial probability that in the foreseeable future she will become competent, for the defendant to be ordered to comply with the treatment regimen prescribed by the appropriate clinical staff members of such facility, and upon non-compliance with the treatment regimen by the defendant for a period of thirty days, for the defendant to be involuntarily medicated in an effort to restore her competency (docket number 23). The government's motion should be granted.

The defendant is charged in a one-count indictment filed September 17, 2003. The indictment charges that on or about September 9, 2003, the defendant, Denise Kimball, wilfully provided false information concerning a threatened attack on a mass transportation facility, in violation of 18 U.S.C. § 1993(a)(7). The government moved for a

psychological examination of the defendant pursuant to 18 U.S.C. § 4241(b) on September 9, 2003. The court granted the government's motion on September 24, 2003 and an examination of the defendant occurred on November 13, 2003 at the Federal Medical Center, Carswell, in Fort Worth, Texas. The defendant moved for an independent psychological examination which was conducted in January 2004. The government moved for a competency hearing and for an order directing continued treatment of the defendant. The court held a competency hearing on March 12, 2004, at which defendant was present and represented by counsel.

Competency To Stand Trial

“Due process prohibits the trial and conviction of a defendant who is mentally incompetent.” Drope v. Missouri, 420 U.S. 162, 172 (1975). Under 18 U.S.C. § 4244, the test for determining competence to stand trial is “whether the defendant has ‘a sufficient present ability to consult with his [or her] lawyer with a reasonable degree of rational understanding--and whether [the defendant] has a rational as well as factual understanding of the proceedings against him [or her].’” Dusky v. United States, 362 U.S. 402 (1960). In a determination of competency the judge is the fact finder and the decision is a factual one. Johnson v. Settle, 184 F. Supp. 103, 106 (W.D. Mo. 1960). The determination is not conducive to automatic formulae but instead must be decided on a case-by-case consideration of all the circumstances. See Hansford v. United States, 365 F.2d 920, 923 (U.S.App.D.C. 1966).

The government moves that the court find the defendant incompetent to stand trial, based in part upon the expert opinions of the clinical staff of the Federal Medical Center, Carswell. Dr. Trent Evans, under the supervision of Dr. Robert Gregg, and Dr. W.M. Pederson examined, interviewed, and administered psychological tests to the defendant on November 13, 2003. Dr. Pederson, Dr. Evans, and Dr. Gregg diagnosed the defendant with Delusional Disorder, Persecutory Type. The written summary of the defendant's examination indicates that she reported believing that she is able to predict

criminal activity by deciphering conversations over the radio and that she is compelled to report that information to law enforcement officials. The examination summary further indicates that the defendant suffers from delusional beliefs related to her current legal situation. Specifically, the defendant believes that she has special relationships with certain members of law enforcement, that law enforcement officials are involved in a conspiracy against her, that various law enforcement agents will be able to “clear up” her situation, that such agents also heard the conversations she heard concerning the threats at issue in this case, and that she has worked with the Division of Criminal Investigation for twelve years and as a result will receive less punishment if found guilty of the crime charged. Finally, results from the defendant’s MACCAT-CA examination, a standardized test designed to gauge reasoning ability in a given individual’s personal legal situation, established a serious impairment in her ability to participate in her defense. According to the examining clinician, the defendant performed in the clinically significant impairment range and “her delusional thought disorder impeded her ability” to discuss questions or address concepts pertaining to her case. The defendant’s motion for transportation to an independent examiner for evaluation on January 23, 2004 was granted on January 20, 2004. However, the defendant has not provided to the court an independent medical opinion as to her competency.

The government further urges the court to grant its motion based upon numerous letters written by the defendant. The government contends that these letters illustrate “that defendant continues to have imaginary conversations with various individuals” and “continues to believe she receives signals and signs, apparently now through voices on television.” The government further contends that the letters show that the defendant continues to believe that she must respond to these signals by reporting her predictions of dire events to law enforcement. Finally, the government states that the letters indicate the defendant’s persisting belief that she is being persecuted. The defendant’s letters clearly reflect delusional beliefs on the part of the defendant regarding the current charge against

her as well as the likely resolution of that charge. Although the letters are articulate, her ability to write well does not detract from the troubling substance of those writings, which indicate a significant detachment from the reality of her current legal situation.

The defendant argues that the government's motion for a determination of incompetency should be denied. In support of her contention, the defendant states that she was able to successfully predict several events, such as a sniper incident in New Jersey, a computer virus effecting a substantial number of computers, and the sinking of a ship in the Atlantic Ocean. The defendant has offered no evidence, other than her assertions, in support of this contention.

Upon examination of the findings by the clinical staff at Carswell as well as the letters written by the defendant, the court finds that the defendant is currently suffering from severe delusions concerning her current legal situation, brought about by a mental disease, namely Delusional Disorder, Persecutory Type, which renders her unable to comprehend the nature and consequences of the instant proceedings against her or to properly assist in her defense. Therefore, the court finds the defendant incompetent to stand trial.

Treatment and Involuntary Medication

Pursuant to 18 U.S.C. § 4241, upon a finding by the court that the defendant is incompetent to stand trial, the court shall commit the defendant to the custody of the Attorney General, who shall hospitalize the defendant for treatment in a suitable facility for such reasonable period of time as is necessary, not to exceed four months, for the defendant to attain the requisite capacity for the trial to proceed. Accordingly, the court recommends that the defendant be placed in the custody of the Attorney General to be treated at a suitable facility for such reasonable time as is necessary to achieve competence, not to exceed four months. The court further recommends that when the director of said treatment facility determines that the defendant has recovered to such an extent that she is able to understand the nature and consequences of the proceedings against her and properly

assist in her defense, the director shall promptly file a certificate to that effect with the clerk of the court which ordered the commitment. The court shall then hold a hearing to determine whether, by a preponderance of the evidence, the defendant has recovered such that she is competent to stand trial. At such time, the court shall order the defendant's immediate discharge from the treatment facility and set the date for trial.

The government moves that the defendant be ordered, in connection with the court's order for her placement at a treatment facility, to comply under penalty of contempt with the treatment regimen, including the taking of psychotropic medication, as prescribed by the appropriate clinical staff at the facility. The government's motion to order the defendant's compliance should be granted.

Finally, the government moves that, upon the defendant's non-compliance with the prescribed treatment regimen for a period of thirty days, the court should order the clinical staff to involuntarily medicate the defendant in an effort to restore her competency. It is constitutionally permissible to involuntarily administer antipsychotic medication to a mentally ill defendant facing serious criminal charges in order to render them competent to stand trial. Sell v. U.S., 123 S. Ct. 2174, 2184 (2003). However, before a court may order forcible administration of psychotropic drugs, it is required to find that the treatment is "medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking into account of less intrusive alternatives, is necessary significantly to further important governmental trial-related interests." Sell, 123 S. Ct. at 2184. The Court, in Sell, also noted that such instances may be rare, and that several requirements must be met for such an order to be constitutionally permissible. See Id. The overriding consideration must be whether the involuntary administration of medication is significantly necessary to further the government's interest in rendering the defendant competent to stand trial. Id.

Before a court may order involuntary medication of a defendant in an attempt to restore competency for trial, the court must find that important governmental interests are at stake. See Id. Here, the government's interest in bringing the defendant to trial for the serious crime charged is undoubtedly important. The defendant is charged with providing false information concerning a potential attack on a mass transit facility, a crime for which if convicted, carries potential imprisonment for a maximum term of twenty years. Additionally, the government has an important interest in ensuring that the defendant receive a fair trial. See Id.

Second, the court must conclude that involuntarily medicating the defendant will significantly further the important governmental interests identified above. See Id. Specifically, the court must find that administration of psychotropic medication is substantially likely to render the defendant competent to stand trial. Id. After examining the defendant at the Federal Medical Center, Dr. Evans, under supervision of Dr. Gregg, opined that psychotropic medication is the treatment of choice for the defendant to restore her competency. Dr. Evans and Dr. Gregg further opined that there is a substantial probability that such treatment will result in the restoration of defendant's competence. Dr. Pederson likewise opined that the only course of treatment likely to effectively treat the defendant's condition is antipsychotic medication. The court thus finds that the administration of medication is substantially likely to render the defendant competent to stand trial.

Additionally, the court must find that administration of the medication is substantially unlikely to produce side effects which will significantly interfere with or undermine the defendant's ability to assist in her defense. See Id. Dr. Pederson identified Haldol Decanoate and Prolixin Decanoate or Enanthate as appropriate medications to restore the defendant's competence. Dr. Pederson described the various possible side effects and their relative rates of occurrence, and noted that although the drugs potentially carry serious side effects such as sudden death due to cardiac arrhythmia and Neuroleptic

Malignant Syndrome, such instances are quite rare, the identified medications are “relatively safe” and “have been used in the treatment on millions of people with major benefit and relatively minor risk of serious side effects.” Dr. Pederson further explained that at times, the identified medications can be sedating, “but the effect tends to lessen over time and whatever effect remains is completely offset by the improvement in rational thought and the lessening of inappropriate emotions.” Dr. Pederson specified that in his experience treating individuals such as the defendant, he has never encountered a side effect that endangered the fairness of a trial. The court finds that administration of psychotropic medication is substantially unlikely to result in effects which could undermine the fairness of the defendant’s trial.

Third, the court must find that involuntary administration of psychotropic medication is necessary to further the earlier identified important governmental interests. Specifically, the court must find that less intrusive treatments are unlikely to achieve substantially the same results. Both Dr. Gregg and Dr. Evans opined that the defendant’s serious delusions concerning her current legal situation effectively exclude the possibility that non-medicinal psychotherapy could be an effective alternative treatment to restore her competence. The Supreme Court, in Sells, indicated that a defendant should be afforded an opportunity to voluntarily take prescribed psychotropic medication for some period of time before a court may order that medication be forcibly administered. Accordingly, it is recommended that the defendant comply with the treatment regimen prescribed by the appropriate clinical staff at such facility as is chosen by the Attorney General for the defendant’s treatment. It is further recommended that if the defendant fails to comply with the prescribed treatment, including the taking of psychotropic medication, for a period of thirty days after entering the treatment facility, the treatment regimen shall be involuntarily administered to the defendant by the appropriate medical staff.


Finally, the court must find that administration of the medication to the defendant is medically appropriate. Specifically, the court must find that the proposed treatment is in the defendant's best medical interest in light of her current medical condition. Based upon the findings of Dr. Gregg, Dr. Evans, and Dr. Pederson that if administered medication the defendant's prognosis would improve, and having reviewed the letters written by the defendant evidencing a continued belief in delusions regarding her current legal situation, the court finds that the defendant's mental condition appears to be substantially deteriorating and that psychotropic medication is in the defendant's best medical interest.

For the reasons discussed above, **IT IS RECOMMENDED**, unless any party files objections¹ to the Report and Recommendation within ten (10) days of the date of the report and recommendation, that the government's motion that the defendant be found incompetent to stand trial be granted, that the defendant be ordered into the custody of the Attorney General to be hospitalized for treatment in a suitable facility for such a reasonable amount of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future she will become competent, that the defendant be ordered to comply with the prescribed treatment regimen at said facility, including the taking of psychotropic medication, and that upon the defendant's non-compliance with said treatment regimen for a period of not less than thirty days from her

¹Any party who objects to this report and recommendation must serve and file specific, written objections within ten (10) court days from this date. A party objecting to the report and recommendation must arrange promptly for a transcription of all portions of the record the district court judge will need to rule on the objections.

arrival at the treatment facility, that the clinical staff at said facility be ordered to involuntarily administer psychotropic medication to the defendant in an effort to restore her competency.

March 23, 2004.



JOHN A. JARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT